

The Influence of American Legal Education in China: A Different Scenario from Japan and South Korea

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1. Overview

In modern society, no lawyers on the bench or at the bar is alike tools without workmen, or engines without engineers. “Legal education” is supposed to provide systematic education to a specific group of people so that human resources are cultivated to execute and apply laws as professionals. First and foremost, legal education is designed to teach legal knowledge, legal skills and ethics for individuals who intend to become legal professionals, or those who simply intend to use their law degree to some other ends, related to law or business. Furthermore, it is impossible for lawyers or legal professionals to function in lack of systematic training for legal practice. Last but not least, legal culture could be inherited from generation to generation through the efforts of legal education institutes¹. Usually, systematic legal education is provided in higher education at universities and colleges in contemporary society, but the formats and approaches to cultivate legal professionals are varied because of the diversity of legal traditions, legal cultures, legal systems, and social and educational policies.

In the Northeast Asia, legal education, as a topic of inquiry and concern, has recently been thrust into the limelight, as various legal education reforms are taking place at almost same time in China, Japan and Korea². It is notable that the three countries have approached the

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¹ John Henry Merryman, *Legal Education There and Here: A Comparison*, 27 *Stan. L. Rev.* (1975), Page 859.

² Andrew Harding etc. edited, *Legal Education in Asia: Imitation to Innovation*,

American law school model with different styles, which sets a good example of different possibilities of transplanting the legal education system originated from common law tradition into the Northeast Asian countries. This article will make an exposure of the unique scenario on the impact of American legal education in China, compared with its counterparts in Japan and South Korea.

I. The Influence of American Legal Education on China in the Modern Era

Foreign laws including the American law started to make impact to the shaping of Chinese law as early as from the end of Qing Dynasty although the contemporary Chinese law is regarded as embracing the characteristic of continental law rather than common law. Early from 1869, William Alexander Parsons Martin (April 10, 1827 — December 17, 1916, also known as Ding Weiliang 丁韪良 in Chinese) was teaching international law in China, at which time he was appointed as president of Tongwenguan, a government-affiliated academy in the late Qing, which contributed to the introduction of a set of international law concepts to China³. Since 1872, the Qing Government selected and dispatched 120 young students to study in the United States. Although most of them majored in technology and science, some of them were interested in social sciences, including political science and law. Most importantly, the experiences of living and studying in America provided them with an opportunity to observe and reflect on social governance through their eyes. Despite most of them were recalled back to China by the Qing Government before they could have completed their studying as planned, more young students started to study a variety of modern knowledge including law since the end of 19th century, which laid down the foundation of comparative legal education, marking the establishment of Soochow University School of Law (Hereinafter refers to “SUSL”), also known as the Chinese Comparative Law School in 1915.

Strongly advocated and involved by some American legal scholars and

Preface, Brill, 2017.

³ See Rapph R. Covell, W.A.P. Martin: Pioneer of Progress in China, Christian University Press; 1st Edition (1978).

Chinese returnees of studying in the United States and European countries, SUSL was opened to dedicate to legal professional education, teaching national law and Anglo-American law. SUSL was featured with providing bilingual legal education of Chinese law and foreign laws for Chinese law students by both Chinese faculty members with the experiences of studying abroad and also full-time or part-time foreign instructors. Due to the existence of the Mixed Court in Shanghai International Settlement and the foreign court systems established by the two common law countries, Britain and the United States, a demand for legal professionals to deal with legal issues in bilingual skills emerged, which also motivated the inception of SUSL.

SUSL was located in Shanghai affiliating to Soochow University. It was involved deeply with American lawyers and law professors since it was founded, at which time Charles W. Rankin, an American lawyer and professor, was appointed as the first dean of the new Comparative Law School of China. In addition to the full-time foreign faculty members teaching in the school, a bunch of lawyers and judges in Shanghai also delivered lectures on a part-time basis. Most importantly, some prominent Chinese returnees played a vigorous role in teaching and running of the school. In its innovative curriculum, a range of common law courses, such as torts, contract and property law, were taught by both Chinese and foreign faculty members in English, especially in its early stage. After 1930s, due to the strict control by the Central Government, SUSL was under transition to add more national law courses instructed in Chinese, while the main body of common law and comparative law courses taught in foreign languages, especially in English, were maintained⁴.

Graduates from SUSL achieved preeminence so much that it was generally regarded to be the leading law school, enjoying the high reputation of “Chaoyang in the North, Soo Chow in the South” amongst Chinese law schools⁵. Among its large amount of prestigious alumni, two of them were at present members of the Permanent Court of Arbitration in

⁴ Alison W. Conner, *Training China's Early Modern Lawyers: Soochow University Law School*, 8 J. Chinese L. 1 (1994).

⁵ Wan Jingbo etc. *Those Legal Elites Who Have Been Forgotten for 30 Years* (Bei Yiwang Sanshinian de Falv Jingying), Southern Weekly, Jan. 10, 2003 (in Chinese).

Hague and other graduates occupied the nation's highest judicial positions.

With the big changes in mainland China in 1949, SUSL was dismantled and American oriented comparative legal education was discontinued. However, support from alumni and friends brought about its re-establishment in the city of Taipei. With the end of the Culture Revolution and the revival of rule of law in mainland China, many graduates and teachers from SUSL made a comeback and resurfaced at courts, law offices, universities, and other institutions that contributed to the re-establishment of China's legal system. Most importantly, with the development of Sino-U.S. legal education exchange, the legacy of teaching American oriented comparative laws has propelled, to some extent, the adoption of elements of American legal education in the P.R.C.

II. The Sino-U.S. Legal Education Exchange and American Law Oriented Comparative Education since 1980s

With the end of the Cultural Revolution in 1976, China began to reconstruct its legal system and implement policies of Reform and Opening Up, which created a big demand for Chinese students to study in developed countries. From that time, China's drive for modernization has become the main engine powering its educational exchange programs with the U.S. Nearly all those exchange programs were aimed at the acquisition of western technology and scientific expertise. Chinese law students and legal scholars were dispatched to developed countries in order to conduct advanced research or to obtain law degrees. The U.S. became an important destination because of the significant role it plays as the most developed country in the world and the biggest investor in Chinese market. Among many exchange programs between China and America, the Committee on Legal Education Exchange with China (CLEEC), was the first university-based exchange organization established and collaborated with American and Chinese law professors with the involvement of the Ministry of Justice and the Ministry of Education in China. The establishment of the CLEEC in 1981 resulted from the demands raised by both U.S. and China academic and legal practical interaction, through which over 200 Chinese scholars were given opportunities to visit and study in the top law

schools in the U. S., signifying the most important starting point for the formal exchange of legal education between these two major countries.

The exchange programs of the CLEEC, not only dispatched Chinese students to study in American law schools and sponsored summer programs on American law in China from 1980s to 1990s, but also boosted the impact of American legal education on the development of legal education in China⁶. Nowadays thousands of Chinese legal scholars and law students go to American law schools to conduct advanced research or obtain legal degrees every year. Meanwhile, more and more American legal scholars and law students visit or study in Chinese law schools each year. It is obvious that tremendous changes have taken place over the past thirty years, none of which would have happened without the pioneering work led by the CLEEC that has facilitated the development of legal education in China and contributed to the reforms and development of legal education. Ever since then, the number of Chinese law students studying in the U. S. universities has been increasing rapidly as the result of above factors. On the other hand, due to the diffusion of American legal knowledge by American legal experts and the returnees of Chinese law students and legal scholars, legal education in China has fundamentally changed both institutionally and pedagogically with the introduction of American substances of legal education, including the institution of the Juris Master degree in China⁷.

The booming of Sino-U.S. legal education interaction promotes the mutual understanding on legal issues, not only stimulating the demand for teaching American law in China, but also providing human resources with adopted pedagogies used in American law schools and common law courses within the Chinese legal education framework. Among years' endeavor, two instances could be highlighted as typical cases. One is clinical legal education, along with other experiential teaching methodologies widely used in the American law school classes having been introduced and transformed into Chinese law school curricula. The other is Peking University School of Transnational Law at Shenzhen, the frontier city of

⁶ Ding Xiangshun, *From Reception to Collaboration: A Study of the Legal Education Exchange between China and the United States since the 1980's*, CHINA LEGAL SCIENCE, Vol. 1 2013, Page 52-58.

⁷ *Id.* Page 65.

reform and opening up in China in 2008.

Inspired by SUSL, Peking University School of Transnational Law (STL) was initiated by some prominent scholars from the United States and China. In 2007, with the proposal by Dr. Hai Wen, one of China's leading development economists and the former Chancellor of Peking University's Shenzhen Graduate School, as well as with the approval by the Ministry of Education of China, STL was established as an innovative graduate-level professional law curriculum in Shenzhen, aiming to (i) educate top university graduates from perspective of different legal traditions and systems, and thereby promote the new policies and practices necessary to facilitate successful cross-border trade and international relations; (ii) contribute to the creation of a Chinese legal profession equipped to serve China's increasingly sophisticated domestic economy and to complete successfully on an international scale with dominant American and British law firms; and (iii) provide domestically in an affordable way as a substitute for studying abroad at great expense⁸. This school is, to some extent, regarded as a follow-up of SUSL. STL is featured with American style that it provides bilingual legal education to Chinese graduate students by instructors from both China and abroad. Students are awarded with both a Chinese Jurist Master's degree and an American-style Juris Doctor degree with completion of over 110 credits in four years. Some prominent American law professors demonstrate their enthusiasm and are involved in the creation and operation of STL at Shenzhen. In particular, Professor Jeffrey Lehman, a former president of Cornell University and dean of the University of Michigan Law School, served as STL's Founding Dean, and the executive dean was Professor Stephen Yandle, who had served as Associate Dean of Yale Law School, as Deputy Consultant on Legal Education and Admission to the Bar of the American Bar Association⁹. The teaching team of STL includes foreign professors in residence or on a visiting basis as well as Chinese full-time professors. The students at STL are supposed to study Chinese law taught by Chinese faculty members in Chinese, as well as American laws and

⁸ See the website of Peking University School of Transnational Law (STL), at <https://stl.pku.edu.cn/about/history-of-stl/> (last visit on June 6, 2020).

⁹ <https://stl.pku.edu.cn/faculty/stephen-yandle/>

comparative laws by foreign instructors in English. The curriculum of STL also reflects the practical aspects of American legal education with a bunch of experiential courses, such as clinical courses and external courses being mandatory¹⁰.

STL even had been ambitious to pursue the accreditation of the ABA right after its establishment. Although the effort was ended up with being futile due to the strong hostility from law schools in the United States, the comparative legal education has brought a new approach to train global lawyers as well as international pioneers, as STL is aiming to teach students to acquire the skills to qualify them as great lawyers, jurists and leaders of any nationality: rigorously analytical thinking, the ability to see all aspects of an issue, the ability to solve complex problems creatively, and the ability to persuade¹¹.

III. Introducing Juris Master Program to China: An Institutional Influence of American Legal Education

The abovementioned comparative legal education exists within the framework of Chinese legal education, which is conducted without institutional evolution. With the rapid increasing of legal education institutes and the deepening of Sino-U.S. legal education interaction, a new demand for high-level legal talents emerged, which resulted in the motivation and inspiration for reforms to legal education programs and teaching methodology since 1990s.

Among those reforms, one of the significant innovations was the introduction of an American style Juris Master (J.M.) Program in 1995. The introduction of Juris Master Program had been proposed by the Ministry of Justice joint with scholars in 1994, which modeled after the American Juris Doctor (J.D.) program, despite of being named with Juris Master as it is equivalent to a master's degree in the Chinese degree

¹⁰ Philip J. McConaughay and Colleen B. Toomey, Preparing for the Sinicization of the Western Legal Tradition: The Case of Peking University School of Transnational Law. In *Legal Education in Asia: From Imitation to Innovation*, Edited by Andrew Harding etc.

¹¹ See the website of Peking University School of Transnational Law (STL) at <https://stl.pku.edu.cn/about/history-of-stl/>

system. Throughout the process of establishing and monitoring the J.M. program, the Ministry of Justice played a vigorous role in pushing forward the adoption of a new legal education program and is still involved in the approval and supervision of J.M. programs at present. In China, usually the Ministry of Education, not the Ministry of Justice, takes direct charge of the legal education. The joint approval and supervision of the J.M. programs shows the determination of bridging education and legal practice, so that law graduate students may meet the demands of legal practice.

The J.M. program was established at the master's degree level, with the aim of admitting students from non-law background to pursue legal education and conduct legal practice. During the period of inception, the universities that were approved to provide J.M. education were strictly restricted to a small number, as the approval was very privileged and competitive. In the year of 1995, only eight legal education institutes successfully got the approval to grant the degree of J.M. from the authority. However, with the deregulation policy, the number of J.M. programs reached a new height of over two hundred in the past two decades.

Unlike the U.S. law schools, the new J.M. program (or new law school system) is based on the old undergraduate-oriented legal education system in China. Therefore, the new programs have to deal with the graduates who have already obtained a Bachelor' degree. In China, J.M. programs recruited two types of students: full-time students and part-time students from 1995 to 2009. Nevertheless, since 2009, the Ministry of Education decided to expand the scale of J.M. programs so as to be open to those who majored in law as undergraduate students with a bachelor of laws' degree. They were permitted to apply for both a full-time and a part-time J.M. program. A new problem was raised, how to teach students who have different backgrounds and various levels of legal knowledge?

At the beginning, only those who were from non-law background were that qualified to apply for the full-time J.M. program and sit for the law school admission examination. But nowadays, those with working experiences, even law-major undergraduates, are eligible too. However, different from the Law School Admission Test in the United States, the scope of subjects for the J.M. program admission test in China consists of law subjects such as Chinese legal history, constitutional law, civil law, and criminal law etc.

In China, many scholars criticized that it does not make sense to test those who have not yet studied legal knowledge, but there are no signs of change to the current method of testing and offering admission¹².

It is also notable that, due to the lack of qualification examination for judges and prosecutors when the Juris Master Programs were introduced, it was impossible to fill the void of the institutional connection between Juris Master system with the bar examination. The unified bar examination was implemented for the first time in 2002, which was completely separate from the Juris Master education.

As one of the significant advantages for the introduction of Juris Master Program in China, it provides opportunities for non-law background students to pursue a law degree and diversifies the backgrounds of law students in the graduate level dramatically. Also, experiential teaching methodologies, such as externship and clinical legal education that originated from American law schools have been added into the curricula of J.M. program gradually, so that it may meet the need of practical education purpose in China.

IV. The Scenario with Chinese color: a comparison and analysis on the approach to American legal education

The three countries, China, Japan and South Korea embrace similarity on the motivation and goals in taking the influence of American legal education to increase the number of legal professionals with competition, who are not only able to meet the need of domestic legal construction but also capable to compete in a more global legal service market.

However, in China, different from the demand of increasing the number of lawyers addressed by the economic organizations in Japan and Korea, discussion relating to increasing the number of high-quality legal professionals in China remained within the legal domain of the country, and the introduction of a new legal education system was conducted by the internal documents issued by the Chinese ministries of justice and

¹² Wang Jian, *Zhongguo Falv Shuoshi Jiaoyu de Chuangban Fazhan yu Chengjiu: 1996—2006*, 5 LAW AND SOCIAL DEVELOPMENT 59 (2007); and Fang Liufang, *Falv Shuoshi Jiaoyu Mianlin de Sange Wenti*, 1 THE JOURNAL OF CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW 101 (2007).

education. In comparison, the establishment of law schools in Japan and South Korea emerged within the context of comprehensive reforms initiated by the cabinet and stipulated by laws passed by the legislature. Although the designers of Juris Master's Degree claimed they modeled or took a reference to the American-style legal education, the characteristics are quite different from American law school. The J.M. program in China shares a similar designation with its counterparts in Japan and South Korea that allows students from diverse backgrounds at the undergraduate level to study law in postgraduate law schools, which is quite similar to the American system. But to a large extent, the approach to adopting American legal education institutionally in China is distinct with Japan and South Korea.

Different to the approaches taken by Japan and South Korea, basically Juris Master programs in China have survived and developed without a fundamental and institutional evolution. Also in terms of the human resources, Chinese, Japanese and South Korean law professors rarely have practical experience outside the classroom. To resolve such kind of problems, the Japanese legislature passed a law in which judges and prosecutors can be appointed to teach at Japanese law schools for a period of time while their public positions are suspended. However, there were no substantive changes in the teaching faculties in Chinese J.M. programs, and the old academic-oriented faculty members are still the main teaching body in the J.M. programs. Therefore, although some changes in pedagogies emerged, the new J.M. program is not distinguished from the old legal education system in China.

In China, changes relating to the qualification for the bar examination have not been produced by the creation of the J.M. program. The system for obtaining legal professional qualification is still separated from legal education. There are no limitations for applicants on whether they have finished formal legal education for sitting for the unified bar examination. There are no institutional connections between legal education and bar examination in China, and hence, this is different from the new Japanese and Korean approaches as well as American law schools.

But the lack of or less institution evolution in adopting American legal education cannot lead to the conclusion of uselessness of American legal education in China. The value of American oriented legal education lies in

its effectiveness in training international lawyers, which has driven and will still lead to the innovation of legal education in the Northeast Asian Countries. China, Japan and South Korean have taken different approaches so far as to legal education evolution and are also confronting different problems resulted from different approaches. The reforms of legal education in the three countries are indeed standing on the crossroad. Therefore, it is significant to identify and compare the different approaches as to American legal education in the three countries so that the legal educators could promote the mutual understanding and collaboration in training legal talents with global competition in this region.